IN THE HIGH COURT OF BOMBAY AT GOA.

SECOND APPEAL NO.136 OF 2004

1. Shri Babuso Rama Gaonkar
(expired), through his legal
representatives:-

1a) Smt. Indira Babuso Gaonkar

1b) Kum. Rekha Babuso Gaonkar

1c) Shri Ram Babuso Gaonkar

1d) Kum. Shashikala Babuso Gaonkar

All major of age,
residents of Quirlapal,
Dabal, Goa. ... Appellants.

V/s

1. Shri Devidas Guno Ghadi,
agriculturist;

2. Shri Ramnath Guno Ghadi,
driver, married,

Both residents of Sadga,
House No.128, Kirlapal,
Sanguem, Goa.

3. Shri Balchandra Babusso Gaonkar
major of age,
resident of Quirlapal,
Dabal, Goa. ... Respondents.

Mr. P. Rao, Advocate for the appellants.

CORAM: A.P. LAVANDE, J.

DATE: 8TH APRIL, 2005.

Oral Order.

Heard Mr. Rao for the appellants. By this appeal, the appellants take exception to judgment and decree dated 31.8.2004 passed by the Additional District Judge, Margao in Regular Civil Appeal No.38/2002 allowing the appeal filed by the respondents against the judgment and decree dated 15.1.2002 passed by the Civil Judge Junior Division, Sanguem in Regular Civil Suit No.30/1993.

2. The appellants are the legal representatives of Babuso Rama Gaonkar, the original plaintiff who filed the above mentioned suit against the respondents herein who were the defendants in the said suit, seeking relief of injunction in respect of 2500 square meters of land forming part of the survey no.141/1. According to the plaintiff, both the plaintiff and the defendants were encroachers in Government land and since the defendants started interfering in the portion already encroached by the plaintiff, the above suit was filed. The Trial Court after appreciating the evidence led by the parties decreed the suit. The Appellate Court, in appeal preferred by the defendants set

aside the decree on various grounds. The Appellate Court primarily allowed the appeal on the ground that the suit property was not identified by the plaintiff and therefore no relief of injunction could have been granted in favour of the plaintiff in the absence of proper identification of the suit property.

3. Mr. Rao learned Counsel appearing for the appellants submitted that there was no dispute about the identification of the property and the Trial Court was absolutely right in decreeing the suit filed by the plaintiff. According to the learned Counsel the finding of the Appellate Court that the plaintiff had not proved the possession in respect of the suit property and that the suit property had not been properly identified are contrary to law. According to the learned Counsel, the sketch produced by the plaintiff through his witness Shri Raikar had clearly established the identity of the suit property.

4. I have considered the submissions made by the learned Counsel. I have also perused the records. The Appellate Court in paragraph 11 of the impugned judgment has held that the original plaintiff had not identified the suit property and the

documents produced by the plaintiff did not establish the correct identity of such plot. Having regard to the evidence led by the plaintiff, I do not find any infirmity in the said finding. Once the plaintiff is not able to establish the identity of the suit property, there is no question of granting any relief and more particularly the relief of injunction in favour of the plaintiff. In the present case having regard to the controversy between the parties, it was absolutely essential for the plaintiff to establish by cogent evidence the identity of the suit property. The plaintiff having failed to establish the identity of the suit property by leading cogent evidence, the Appellate Court was absolutely justified in reversing the decree passed by the Trial Court. The Trial Court was wrong in decreeing the suit without proper identification of the suit property.

5. In view of the above, I am unable to accept the submissions made by the learned Counsel for the appellants. No fault can be found with the decree passed by the Appellate Court. No substantial question of law is involved in the present appeal. Accordingly the appeal is summarily rejected.

A.P. LAVANDE, J.

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